

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

_____)	
In re:)	
)	
GREENWAY BUILDING SOLUTIONS,)	Case No. # 21-11162-BFK
LLC,)	
Debtor.)	Chapter 7
_____)	
MARY COURTNEY NAZARENO,)	
)	
Movant,)	
)	
v.)	
)	
GREENWAY BUILDING SOLUTIONS,)	
LLC,)	
)	
and)	
)	
SCOTT SHEPARD, Debtor Designee,)	
)	
and)	
)	
DONALD F. KING, Trustee,)	
)	
and)	
)	
JOHN P. FITZGERALD, III, U.S. Trustee,)	
)	
Respondents.)	
_____)	

MOTION FOR RELIEF FROM STAY

MARY COURTNEY NAZARENO (“Ms. Nazareno”), by counsel, moves this Court to enter an order granting Ms. Nazareno relief from the automatic stay under 11 U.S.C. § 362(d),

Jason F. Zellman, Esq., VSB #77499
SUROVELL ISAACS & LEVY PLC
4010 University Drive, Second Floor
Fairfax, Virginia 22030
Telephone (703) 251-5400
Counsel for Mary Courtney Nazareno

and states:

Preliminary Statement

1. Ms. Nazareno is a consumer and customer of Greenway Building Solutions, LLC (“Debtor”) who paid \$12,500 to Debtor for improvements to her residence. Debtor kept the deposit but did not perform the work. Now Ms. Nazareno wishes to pursue a claim against the Virginia Contractor Transaction Recovery Fund established by Va. Code Ann. § 54.1-1120, to recover the money she lost. The Virginia Contractor Transaction Recovery Fund is not a part of the Debtor’s bankruptcy estate; the Debtor does not have any equity or interest in such Fund; and the Fund is thus not necessary to liquidation or reorganization. Ms. Nazareno otherwise lacks adequate protection of her interest, aside from her claim against the Fund.

Parties & Jurisdiction

2. Debtor Greenway Building Solutions, LLC filed this Chapter 7 bankruptcy case via a voluntary petition on June 28, 2021. This Court entered an Order of Designation on June 29, and Scott Shepard was designated to perform duties imposed on the Debtor by the Bankruptcy Code.

3. Ms. Nazareno is an interested creditor, as more fully set forth below.

4. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 362(d), and Fed. R. Bankr. P. 4001 and 9014.

Facts

5. The Debtor Greenway Building Solutions, LLC is a licensed Virginia Class A Contractor, with license number # 2705150953. Debtor held itself out as a full-service general contractor with experience in construction, kitchen & bath, and deck and patio work.

6. On September 9, 2020, Ms. Nazareno contracted with Debtor to perform improvements to her residence, as more fully set forth in their attached Contract. EXHIBIT A (the “Contract”).

7. Ms. Nazareno paid Debtor a deposit of \$10,000 on September 18, 2020 and an additional \$2,500 on April 2, 2021, upon their request, ostensibly for permits.

8. Between approximately November 2020 and March 2021 over fifty emails were exchanged between Ms. Nazareno and Debtor requesting updates and inquiring about the Debtor’s ability to complete the work specified in the Contract. Debtor provided assurances that they were “still working on it” and that the work would commence in the “end of June”.

9. On or about May 10, 2021, Scott Shepard informed Ms. Nazareno that Debtor would be filing for bankruptcy and that the work would not be performed.

10. Debtor kept Ms. Nazareno’s deposit and payments.

11. Ms. Nazareno requested a refund of the \$12,500 she paid.

12. No refund was provided.

13. Debtor did not perform the work and has no intent to perform the work.

The Virginia Contractor Transaction Recovery Fund

14. Virginia has established a Virginia Contractor Transaction Recovery Fund (the “Fund”) pursuant to Va. Code Ann. § 54.1-1118 *et seq.*, to protect consumers with certain verified claims and/or unsatisfied judgments against a regulated contractor licensed by the Virginia Board of Contractors.

15. Debtor is a “Regulant” under the meaning of the Virginia Contractor Transaction Recovery Act. *See* Va. Code Ann. § 54.1-1118.

16. Ms. Nazareno intends to seek relief from the Fund as a “Claimant,” as defined by Va. Code Ann. § 54.1-1118, pursuant to Va. Code Ann. § 54.1-1120.

17. However, Ms. Nazareno is unable currently to pursue a claim or a judgment against Debtor, and thus unable to collect any recovery from the Fund, due to the automatic stay. *See* 11 U.S.C. § 362.

Relief from the Automatic Stay Should Be Granted

18. Ms. Nazareno seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d). Relief is warranted because the Virginia Contractor Transaction Recovery Fund is not a part of the Debtor’s bankruptcy estate. Moreover, the Debtor does not have any equity or interest in such Fund and the Fund is not necessary to liquidation or reorganization. Ms. Nazareno otherwise lacks adequate protection of her interest, aside from her claim against the Fund.

19. If the stay is lifted, Ms. Nazareno will intend to seek a judgment against Debtor which will be unsatisfied.

20. The unsatisfied judgment will constitute grounds for Ms. Nazareno to recover from the Fund, pursuant to Va. Code Ann. § 54.1-1120.

21. Allowing Ms. Nazareno to do so would be in the best interests of justice and will not deplete or diminish any assets of the Debtor’s bankruptcy estate.

22. For the foregoing reasons, cause exists to modify the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

WHEREFORE, MARY COURTNEY NAZARENO, respectfully requests that this Court:

1. Enter the attached proposed Order, granting relief to Ms. Nazareno relief from the automatic stay;

2. Modify the automatic stay imposed by 11 U.S.C. § 362 to allow Ms. Nazareno to pursue her claim under the Contract to a final judgment;
3. Allow Ms. Nazareno to enforce any judgment obtained upon the Contract against the Virginia Contractor Transaction Recovery Fund, pursuant to Va. Code Ann. § 54.1-1120;
4. Grant Ms. Nazareno relief from the automatic stay; and
5. Award her such other and further relief as the Court deems just and equitable.

MARY COURTNEY NAZARENO

By: /s/ Jason F. Zellman
Counsel

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NOTICE

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not wish the Court to grant the relief sought in this motion, or if you want the Court to consider your views on the motion, then within 14 days from the date of service of this motion, you must file a written response explaining your position with the Court and serve a copy on the movant. Unless a written response is filed and served within this 14-day period, the Court may deem opposition waived, treat the motion as conceded, and issue an order granting the requested relief without further notice or hearing.

If you mail your response to the Court for filing, you must mail it early enough so the Court will receive it on or before the expiration of the 14-day period.

Certificate of Service

I certify that, on September 29, 2021, a copy of the foregoing Motion for Relief from Stay has been served on all parties entitled to receive notice via the Court's CM/ECF service and on the parties listed below via pre-paid first-class mail:

Ashley Frances-May Morgan
Ashley F. Morgan Law, PC
722 Grant Street Suite G
Herndon, VA 20170

Counsel for Debtor Greenway Building Solutions LLC and Debtor Designee Scott Shepard

Donald F. King, Trustee
1775 Wiehle Avenue, Suite 400
Reston, VA 20190
Chapter 7 Trustee

John P. Fitzgerald, III, U.S. Trustee
Office of the U.S. Trustee - Region 4
1725 Duke Street
Suite 650
Alexandria, VA 22314
U.S. Trustee

/s/ Jason F. Zellman
Jason F. Zellman

Listing of Attached Exhibits

EXHIBIT A Final Contract between Greenway Building Solutions and Courtney Nazareno, September 9, 2020.